



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167339

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on October 13, 2015, at La Crosse, Wisconsin. Two previously scheduled hearings were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly closed petitioner's FS case.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner received FS for himself and three children. In early to mid-2015, the county did an investigation and determined that JH, petitioner's girlfriend, lived in the petitioner's home.

3. On June 15, 2015, the respondent sent petitioner a notice requesting that he verify JH's income. Petitioner was given until June 24, 2015, to respond.
4. Petitioner did not respond. By a notice dated June 25, 2015, the county informed petitioner that FS would be terminated effective August 1, 2015, because he did not verify information.

DISCUSSION

An FS recipient is required to verify information that can affect eligibility. 7 C.F.R. §273.2(f). If the household fails to verify required information by the time limit, the agency may deny the FS. 7 C.F.R. §273.14(g)(3); FS Handbook, Appendix 1.2.1.2.

FS rules provide as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the respondent has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who

lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

There is no definition in the code of the meaning of “living with.” Basically the determination revolves around a common sense interpretation of whether a person is living in the FS household.

The problem for petitioner’s side is that there is no evidence that the couple actually was living apart except the couple’s own statements. State of Wisconsin Department of Motor Vehicles records identify JH using petitioner’s address. A CLEAR database search shows JH residing in Wisconsin at petitioner’s residence. Petitioner was observed driving a vehicle registered to JH. JH’s daughter resides with petitioner, and attends school in petitioner’s district. JH was at petitioner’s home when the investigator first made contact with her in February, 2015.

Petitioner testified that he and JH have an on-again/off-again relationship. He stated that they are presently on-again, but that when he received the verification letter from the respondent, they were not living together. Respondent’s electronic case comments corroborate the petitioner’s communication to the respondent in this regard. Petitioner maintains that JH resided with her parents when they were not together, and that JH’s daughter remained in his home so that she wouldn’t have to change schools.

In the end, I conclude that the FS termination was determined correctly. I absolutely believe that the couple had a rocky relationship and that there may have been times when JH was staying with her parents temporarily. The petitioner has not established that JH actually was out of the household during any specific time period or considered herself to be out of the household, even if she sometimes stayed elsewhere.

I have conducted innumerable hearings where the issue is whether a household member actually was in the home when reported to be absent. In my experience there are a number of indications that a couple who claimed to be separated actually remained together. One is that JH continued to use the petitioner’s address, even after she moved to a different address. Another is that JH had no separate, verifiable address, but instead was alleged to stay with relatives. A third is that JH was at the residence when the investigator appeared. And a fourth is that, after learning that he was being investigated, petitioner reported to the agency that the couple reconciled and they reapplied for FS benefits jointly. Petitioner and JH fit the profile perfectly. Based on the record before me, I conclude that the respondent has established that petitioner and JH resided together, and properly sought to verify JH’s income.

CONCLUSIONS OF LAW

The respondent correctly terminated petitioner’s FS case due to petitioner’s failure to provide requested household income verification.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of November, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2015.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability